

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Market Dominant Product Prices  
Inbound Market Dominant Multi-Service Agreements  
with Foreign Postal Operators  
Hongkong Post–United States Postal Service  
Bilateral Agreement (MC2010-35)  
Negotiated Service Agreement

Docket No. R2012-4

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE NOTICE CONCERNING RATE ADJUSTMENT  
FOR BILATERAL AGREEMENT WITH HONGKONG POST 2012 AND  
FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(November 30, 2011)

The Public Representative hereby provides comments pursuant to Order No. 981.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of a Type 2 rate adjustment for inbound letter post entered pursuant to an additional Inbound Market Dominant Multi-Service Agreement.<sup>2</sup> The Notice concerns the inbound portion of a bilateral agreement with the Hongkong Post Group (Hongkong Post 2012 Agreement), which would set negotiated rates for various inbound letter post items, including a service for delivery confirmation scanning of inbound letter post small packets (ePackets). Notice at 4.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketService Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post

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<sup>1</sup> PRC Order No. 981, Notice and Order Concerning Rate Adjustment for Bilateral Agreement with Hongkong Post and Functionally Equivalent Negotiated Service Agreement, November 18, 2011.

<sup>2</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 14, 2011 (herein "Notice").

2010 Agreement) within the product.<sup>3</sup> Subsequently, the Commission determined that bilateral agreements with the Hongkong Post Group (Hongkong Post 2011 Agreement) and China Post Group (China Post 2011 Agreement) should be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.<sup>4</sup>

The Postal Service asserts that the Hongkong Post 2012 Agreement is similar, and therefore functionally equivalent, to the China Post 2010 Agreement, TNT Agreement, Hongkong Post 2011 Agreement, and the China Post 2011 Agreement. Notice at 8. Consequently, the Postal Service proposes to include the Hongkong Post 2012 Agreement within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 9. The Postal Service also asserts that the negotiated rates in the Hongkong Post 2012 Agreement result in “improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items.” *Id.* at 1. The negotiated rates are intended to become effective on January 1, 2012, and remain in effect for one year from that date. *Id.* at 2 and 10.

## COMMENTS

The Public Representative has reviewed the Hongkong Post 2012 Agreement and the supporting financial model filed under seal that accompanied the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the Hongkong Post 2012 Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service

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<sup>3</sup> See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

<sup>4</sup> See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011; see also Order No. 871, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2011-7, September 23, 2011. More recently, the Commission approved the addition of bilateral agreements with Singapore Post and Australia Post to the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. See PRC Order No. 995, Order Approving Rate Adjustment for Singapore Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011; see also PRC Order No. 996, Order Concerning Additional Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2012-2, November 23, 2011.

during the contract period. Moreover, the Public Representative concludes that the Hongkong Post 2012 Agreement is functionally equivalent to the baseline China Post 2010 Agreement.

*Functional Equivalence.* In its Notice, the Postal Service asserts that the Hongkong Post 2012 Agreement is functionally equivalent to all of the above referenced previously approved agreements included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 8. However, the Hongkong Post 2012 Agreement does not appear to be similar to the baseline TNT Agreement in one important respect: the requirement of a quality of service adjustment to terminal dues. Under the TNT Agreement, a quality of service adjustment is applicable to most letter post items.<sup>5</sup> By contrast, it appears that a quality of service link to terminal is not applicable to letter post items under the Hongkong Post 2012 Agreement since the requirement for such an adjustment (or lack thereof) is not provided for in the Agreement.

The Postal Service's Notice identifies "minor differences" between the Hongkong Post 2012 Agreement and the Hongkong Post 2011 Agreement. Notice at 10 – 11. With respect to the Hongkong Post 2012 Agreement, the Notice does not specifically identify a quality of service adjustment as a difference compared to the Hongkong Post 2011 Agreement. *Id.* The Hongkong Post 2011 Agreement excludes a quality of service adjustment.<sup>6</sup> Moreover, the financial model submitted in support of the Hongkong Post 2012 Agreement does not include an adjustment for quality of service when calculating the CY 2012 estimated terminal dues revenues.<sup>7</sup>

Upon inquiry, counsel for the Postal Service explained the absence of a requirement concerning a quality of service adjustment to terminal dues in the

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<sup>5</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, Docket Nos. MC2010-35, R2010-5, and R2010-6, September 10, 2010, (herein "Response to CHIR No. 1, Docket Nos. MC2010-35, R2010-5, and R2010-6"), at 3 (Question 2(a)).

<sup>6</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2011-4, January 31, 2011, Attachment 2 (Hongkong Post 2011 Agreement) at 9 (Annex 1: Letter Post Settlement Rates).

<sup>7</sup> Excel file HK\_MD\_IB\_2011.11.13.xls, worksheet tab 10\_Current\_TDues\_Rates, Column B.

Hongkong Post 2012 Agreement.<sup>8</sup> The absence of such an adjustment appears to be a function of Hongkong's status as a transition system country. The Public Representative believes the Commission should request further clarification from the Postal Service as to whether or not a quality of service adjustment will be applicable to letter post entered pursuant to the Hongkong Post 2012 Agreement. Moreover, given the effect on terminal dues revenues to the Postal Service, the Commission should require that all future Postal Service notices concerning subsequent functionally equivalent agreements make clear whether or not a quality of service adjustment is applicable to letter post entered pursuant to such agreements.

Nevertheless, given the absence of a quality of service adjustment to terminal dues under the Hongkong Post 2012 Agreement, the Public Representative concludes that that agreement is functionally equivalent to the baseline China Post 2010 Agreement. Under the China Post 2010 Agreement, there is also no quality of service adjustment applicable to terminal dues payments.<sup>9</sup>

*Financial Improvement.* Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. With respect to criterion (1), the Postal Service asserts that the negotiated rates "result[ ] in improvement over the [UPU] default rates." Notice at 1.

The Public Representative also concludes that the negotiated rates for inbound letter post items should result in improvement compared to the "default" terminal dues rates established by the UPU for CY2012.<sup>10</sup> The financial model indicates that based upon the negotiated rates and estimated costs the Hongkong Post 2012 Agreement should improve the financial position of the Postal Service during the one-year term of

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<sup>8</sup> Telephone communication with Christopher C. Meyerson, Attorney, United States Postal Service, Wednesday, November 30, 2011.

<sup>9</sup> Response to CHIR No. 1, Docket Nos. MC2010-35, R2010-5, and R2010-6, at 7 (Question 5 (a)-(c)).

<sup>10</sup> See UPU Letter Post - Convention, Article 28, 8.3., cited in Response of the United States Postal Service to Chairman's Information Request No. 1, Docket No. R2011-4, March 4, 2011, (herein "Response to CHIR No. 1, Docket No. R2011-4"), at 2 (Question 2).

the agreement. The Hongkong Post 2012 Agreement should also make some improvement in the operational performance of the Postal Service. Notice at 5.

However, this conclusion is based solely on a comparison of the default UPU terminal dues rates and the negotiated rates. In its review of the Hongkong Post 2011 Agreement, the Commission requested that the Postal Service support its assertion that the negotiated rates would result in an improvement over the default terminal dues rates by calculating the cost coverage using the default rates and internal air conveyance charges.<sup>11</sup> The Commission should again require the Postal Service to support its assertion with respect to the Hongkong Post 2012 Agreement.<sup>12</sup>

In addition, the Postal Service's financial model uses domestic mail processing and domestic delivery unit cost estimates for ePackets that are only slightly more than the mail processing and delivery unit cost estimates for Air Letters/Cards (LC).<sup>13</sup> The unit cost estimates for ePackets appear to be understated because the average weight of ePackets is likely to be many times the average weight of Air LC. The Public Representative urges the Commission to request further explanation from the Postal Service justifying the estimated domestic mail processing and domestic delivery unit costs for ePackets.

With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that they are not implicated by the inbound Hongkong Post 2012 Agreement. Notice at 5-6, and 8.

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<sup>11</sup> Response to CHIR No. 1, Docket No. R2011-4, at 2 (Question 2).

<sup>12</sup> The Public Representative submits that the Postal Service should also be required to support its assertion in all future notices concerning the filing of subsequent functionally equivalent agreements for addition to the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product by providing workpapers with its notice showing the cost coverage using the default terminal dues rates and internal air conveyance charges.

<sup>13</sup> Excel file HK\_MD\_IB\_2011.11.13.xls, worksheet tab 06\_Product\_Unit\_Cost\_Inputs.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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